



Telecom Order CRTC 2017-129

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Determination of costs award with respect to the participation of the Canadian Association of the Deaf in the proceeding leading to Telecom Regulatory Policy 2016-496

Application

1. By letter dated 27 July 2016, the Canadian Association of the Deaf (CAD) applied for costs with respect to its participation in the proceeding leading to Telecom Regulatory Policy 2016-496, in which the Commission reviewed its policies regarding basic telecommunications services in Canada (the proceeding).
2. The Commission received an answer from Bell Canada¹ dated 29 July 2016. CAD filed a reply dated 17 August 2016.
3. CAD submitted that it had met the criteria for an award of costs set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) because it represented a group or class of subscribers that had an interest in the outcome of the proceeding, it had assisted the Commission in developing a better understanding of the matters that were considered, and it had participated in a responsible way.
4. In particular, CAD submitted that it had advanced the interests of persons with disabilities regarding issues that were discussed during the proceeding and that it provided concrete recommendations.
5. With respect to the group or class of subscribers CAD has submitted that it represents, CAD explained that it is a grassroots-driven organization controlled by, operated by, and composed of persons who are culturally and linguistically Deaf. CAD stated that its positions were developed by its Board of Directors (who are themselves members of the Deaf community) and shared with CAD's members to ensure that these positions accurately reflected the community's wishes and had their support.

¹ Although Bell Canada filed an answer solely on its own behalf, it participated in the basic telecommunications services proceeding on its own behalf, and on behalf of its affiliates Bell Aliant Regional Communications, Limited Partnership (which, effective 1 July 2015, is operated as a division of Bell Canada); Bell Mobility Inc.; Câblevision du Nord du Québec inc.; DMTS; KMTS; NorthernTel, Limited Partnership; Northwestel Inc.; Ontera; and Télébec, Limited Partnership.

6. CAD requested that the Commission fix its costs at \$24,078.89, consisting of \$22,910.00 for consultant fees and \$1,168.89 for disbursements. CAD filed a bill of costs with its application.
7. With respect to its consultant fees, CAD claimed 110 hours at the external rate of \$110 per hour for an external consultant and 23 days at the in-house rate of \$470 per day for its internal consultant.
8. With respect to disbursements, CAD claimed travel and accommodation expenses for the appearance of one its consultants at the hearing.
9. CAD submitted that all the telecommunications service providers that participated in the proceeding should be required to pay any costs awarded by the Commission (the costs respondents).

Answer

10. Bell Canada argued that certain costs claimed by CAD were unreasonable and unnecessary, and that they should be disallowed. In Bell Canada's view, CAD had improperly claimed the external consultant rate for time spent on the proceeding by the President of CAD's Board of Directors. Bell Canada submitted that the President of CAD's Board of Directors holds a strong degree of control over CAD's operations and decisions; therefore, he does not meet the eligibility criteria set out in Telecom Order 2014-351 for using the external consultant rate. Bell Canada indicated that as such, the daily rate for an in-house consultant should have been used, as established in the Commission's *Guidelines for the Assessment of Costs* (the Guidelines).
11. With respect to the allocation of responsibility for payment costs, Bell Canada submitted that the costs should be apportioned between the telecommunications service providers that participated in the proceeding based on telecommunications operating revenues (TORs),² consistent with the Guidelines.

Reply

12. CAD argued that the President of its Board of Directors should not be considered an in-house consultant but rather an external one. CAD explained that under its corporate structure, the position of president of the Board of Directors is a volunteer position whose responsibilities are very different from those that are typically exercised by the president of a board of a for-profit corporation. CAD indicated that the president of its Board of Directors exercises a limited role in its operations and only casts a vote in the case of a tied vote. As such, the president does not exert a strong degree of control over CAD's operations.

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

13. CAD further explained that its only permanent staff are an executive director and a part-time administrative assistant. CAD added that the President of the Board of Directors also provides consulting services to other clients.
14. CAD requested that the Commission not apply the Guidelines in a strict manner to charitable organizations like itself that do not have the resources that for-profit companies do to participate in Commission proceedings. CAD noted the limited number of persons with combined expertise in accessibility and telecommunications issues, which leaves it to rely upon a few select people when participating in Commission proceedings.

Commission's analysis and determinations

Eligibility

15. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

68. The Commission must determine whether to award final costs and the maximum percentage of costs that is to be awarded on the basis of the following criteria:

- (a) whether the applicant had, or was the representative of a group or a class of subscribers that had, an interest in the outcome of the proceeding;
- (b) the extent to which the applicant assisted the Commission in developing a better understanding of the matters that were considered; and
- (c) whether the applicant participated in the proceeding in a responsible way.

16. In Telecom Information Bulletin 2016-188, the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. CAD represents those who are culturally and linguistically Deaf. CAD has demonstrated that it meets the first criterion by relying on its Board of Directors, which is made up entirely of members of the Deaf community, and by ensuring that its members supported its positions.
17. CAD has also satisfied the remaining criteria through its participation in the proceeding. In particular, CAD provided a valuable and unique perspective that helped the Commission understand how the issues under consideration could affect members of the Deaf community who require the telecommunications services under review to be available in an accessible manner.
18. Accordingly, CAD is eligible for an award of costs in relation to its participation in the proceeding.

Consultant fees

19. The Commission recognizes the important contribution that non-profit organizations with volunteer Boards of Directors make to its ability to better understand the issues in a proceeding and to help the Canadians represented by the organization. In these organizations, it is common for Board of Director members to take on two roles: (i) providing oversight as a director regarding the organization's governance and operations, and (ii) conducting work traditionally undertaken by paid staff or consultants, including researching and drafting the organization's submissions to the Commission. It would not be in the public interest to prevent these organizations from recovering costs simply because the work was completed by a volunteer Board member, since it is unlikely that the organization would be able to participate in Commission proceedings without this cost recovery.
20. However, it remains important for the Commission to ensure that such directors acting in their consultant roles are properly categorized as in-house or external consultants based on the principles set out in Telecom Order 2014-351, adapted to the circumstances. The costs that can be reasonably claimed for external consultants are higher than those for in-house consultants. This is because it is presumed that in-house consultants are part of the organization and providing services as part of their regular duties, the costs for which are covered by the organization's regular operating costs. However, external consultants are presumed to be charging the organization industry rates for specific expertise.
21. In Telecom Order 2014-351, the Commission provided a number of factors to consider in assessing consultants' independence from costs applicants, including whether the consultant has other clients in the communications field and whether they used their own resources and equipment to complete their work.
22. CAD is a registered charity with a volunteer Board of Directors who participated directly in the development of CAD's submissions. The individual whose time is being disputed is the President of the Board of Directors. However, the time claimed relates to the preparation and presentation of submissions, which is normally undertaken by paid staff or external consultants. Accordingly, the Commission considers that the President's time was spent not in his role as a Director but as a consultant.
23. Moreover, the record indicates that the President provides consulting services to other clients, for which he receives payment. As such, it is appropriate for CAD to claim costs for his time at the external consultant rate.

Disbursements

24. The amounts claimed in respect of disbursements are in accordance with the Guidelines, as set out in Telecom Regulatory Policy 2010-963.

Conclusion

25. In light of the above, the total amount claimed by CAD was necessarily and reasonably incurred and should be allowed.
26. This is an appropriate case in which to fix the costs and dispense with taxation, in accordance with the streamlined procedure set out in Telecom Public Notice 2002-5.

Costs respondents and allocation

27. The Commission has generally determined that the appropriate costs respondents to an award of costs are the parties that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding. Given the scope of the proceeding, a large number of parties both had a significant interest in the outcome of the proceeding and participated actively in the proceeding.
28. It is the Commission's general practice to allocate the responsibility for payment of costs among costs respondents based on their TORs³ as an indicator of the relative size and interest of the parties involved in the proceeding. No party disputed the appropriateness of using TORs in the present case.
29. As set out in the Guidelines, the Commission will generally name a maximum of 10 costs respondents for a costs award of up to \$20,000 and will add an extra respondent for each additional \$5,000 awarded. However, as set out in Telecom Order 2015-160, the Commission considers \$1,000 to be the minimum amount that a costs respondent should be required to pay due to the administrative burden that small costs awards impose on both the applicant and costs respondents.
30. Accordingly, Bell Canada, Rogers Communications Canada Inc. (RCCI),⁴ and TELUS Communications Company (TCC) are the appropriate costs respondents in the circumstances. The responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell Canada	43.3%	\$10,426.16
TCC	29.7%	\$7,151.43
RCCI	27.0%	\$6,501.30

³ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

⁴ In the proceeding, submissions were received from Rogers Communications Partnership (RCP). However, on 1 January 2016, RCP ceased to exist. All of RCP's business activities, including its assets and liabilities, are now held by RCCI.

31. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell companies. The Commission leaves it to the members of the Bell companies to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

32. The Commission **approves** the application by CAD for costs with respect to its participation in the proceeding.
33. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CAD at \$24,078.89.
34. The Commission **directs** that the award of costs to CAD be paid forthwith by Bell Canada, TCC, and RCCI according to the proportions set out in paragraph 30.

Secretary General

Related documents

- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *Determination of costs award with respect to the participation of the Ontario Video Relay Service Committee in the proceeding initiated by Telecom Notice of Consultation 2014-188*, Telecom Order CRTC 2015-160, 23 April 2015
- *Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding initiated by the application of Bragg Communications Inc., operating as EastLink, regarding 30-day notice requirements for service cancellations*, Telecom Order CRTC 2014-351, 3 July 2014
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *Action Réseau Consommateur, the Consumers’ Association of Canada, Fédération des associations coopératives d’économie familiale and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002